

Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
[February 18, 2000]

NOTICE OF PROPOSED RULEMAKING

Plan Submitter, RPF and LTO Responsibilities, 2000

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend the following existing sections of Title 14 of the California Code of Regulations (14 CCR):

§ 1035	Plan Submitter Responsibility
§ 1035.1	Registered Professional Forester Responsibility
§ 1035.3	Licensed Timber Operator Responsibilities
§ 1037	THP Preharvest Inspection-Filing Return
§ 1092.11	PTHP Submitter Responsibility
§ 1092.12	Registered Professional Forester Responsibility
§ 1092.14	Licensed Timber Operator Responsibility
§ 1092.16	PTHP Review Inspection-Filing Return

PUBLIC HEARING

The Board will hold a public hearing starting at 9:00 A.M. on Wednesday, April 5, 2000 at the Resources Auditorium, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M. on Monday, April 3, 2000. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

All written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551, 4552 and 4571 authorizes the Board to adopt such rules and regulations as it determines are reasonable necessary to enable it to implement, interpret, or make specific sections 4582, 4582.5 and 4571 of the Public Resources Code.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the Legislature's concern throughout the state relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources provide watershed protection and fisheries (ref. PRC Sec. 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC Sec. 4513). Public Resources Code Section 4551 gives the Board the authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes, and estuaries.

In previous rulemaking actions the Board adopted rules which set forth the responsibilities of the Timber Harvesting Plan (THP) Submitter, the Registered Professional Forester (RPF) who prepared the plan, and the Licensed Timber Operator (LTO) who will harvest the timber. The Board has determined that there is a need to add some responsibilities to each of these parties.

14 CCR § 1035 **Plan Submitter Responsibility**

The THP Submitter will be required to retain a Registered Professional Forester to provide professional advice to the timberland owner and the Licensed Timber Operator throughout all timber operations on the approved Timber Harvesting Plan.

14 CCR § 1035.1 **Registered Professional Forester Responsibility**

The Registered Professional Forester will be given several additional responsibilities. First, the RPF will have to disclose to the timberland owner, timber owner, and plan submitter any

financial interest the RPF has with the LTO, plan submitter, timberland owner, timber owner, timber, or land related to the Timber Harvesting Plan. The RPF retained by the THP submitter will have to be present a sufficient number of hours each week to know the progress of the timber operations. The RPF will be given authority by the Timber Harvesting Plan Submitter, timberland owner and the LTO, in writing, to stop timber operations to prevent or repair any significant damage to the natural resources. The RPF must also inform the LTO of potential damage to the environment and what actions must be taken to minimize that damage.

14 CCR § 1035.3 **Licensed Timber Operator Responsibilities**

The Licensed Timber Operator will have the responsibility to sign the THP and any major amendments to the plan, which will be an agreement to follow the terms and specifications of the plan. The LTO will have to provide a contact on the plan during all timber harvesting to receive advice from the RPF and stop timber operations if necessary.

14 CCR § 1037 THP Preharvest Inspection-Filing Return

The rule is amended to require that the Licensed Timber Operator be invited to attend a preharvest inspection, if one is required.

14 CCR § 1092.11 **PTHP Submitter Responsibility**

The THP Submitter will be required to retain a Registered Professional Forester to provide professional advice to the timberland owner and the Licensed Timber Operator throughout all timber operations on the approved Timber Harvesting Plan.

14 CCR § 1092.12 **Registered Professional Forester Responsibility**

The Registered Professional Forester will be given several additional responsibilities. First, the RPF will have to disclose to the timberland owner, timber owner, and plan submitter any financial interest the RPF has with the LTO, plan submitter, timberland owner, timber owner, timber, or land related to the Program Timber Harvesting Plan (PTHP). The RPF retained by the PTHP submitter will have to be present a sufficient number of hours each week to know the progress of the timber operations. The RPF will be given authority by the PTHP submitter, timberland owner and the LTO, in writing, to stop timber operations to prevent or repair any significant damage to the natural resources. The RPF must also inform the LTO of potential damage to the environment and what actions must be taken to minimize that damage.

14 CCR § 1092.14 **Licensed Timber Operator Responsibility**

The Licensed Timber Operator will have the responsibility to sign the PTHP and any major amendments to the plan, which will be an agreement to follow the terms and specifications of the plan. The LTO will have to provide a contact on the plan during all timber harvesting to receive advice from the RPF and stop timber operations if necessary.

14 CCR § 1092.16 **PTHP Review Inspection-Filing Return**

The rule is amended to require that the Licensed Timber Operator be invited to attend a preharvest inspection, if one is required.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: None
- Potential cost impact on private persons or directly affected businesses. The rule proposal will affect businesses and small business related to the timber industry by increasing the cost for timber harvest. These extra cost are primarily related the cost of additional time being required for the RPF. The range of cost for a small timber harvesting plan is estimated from \$100 – 2,000. This is primarily in added cost for a Registered professional Forester. For these small plans this is an estimated 50% increase in forester cost. The numbers would be much greater for larger more complex Timber Harvesting Plans, however the value of the timber harvested would also be much larger. It should be noted that the additional oversight by an RPF may result in a reduction in violations of the Forest Practice Rules statewide. With the potential for civil penalties related to violations, RPFs, LTOs, and landowners could benefit from the rules due to avoidance of the cost of civil penalties. Additionally, the RPF oversight could result in fewer impacts on resources such as wildlife and the beneficial uses of water. This would result in a benefit to the timberland owner as well as all other persons in the State in the long-term. The Board staff also considered that over an extended period of time, the amount of time an RPF would be required to oversee operations of experienced operators would diminish so that the costs of the additional regulations would balance with the benefits derived from increased protection.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

PLAIN ENGLISH DETERMINATION AND OVERVIEW

The Board has determined that the proposed regulations affect small businesses.

Plain English Policy Overview

The Z'berg-Nejedly Forest Practice Act of 1973 (FPA) established the Legislature's intent to consider the public's need for long-term watershed protection, fisheries and wildlife. It directed the State Board of Forestry and Fire Protection to adopt rules to control unreasonable effects on the beneficial uses of the States waters and to maintain an effective and complete system of regulations for all timberland.

Since the inception of the FPA, there has been a question of whether the California Department of Forestry and Fire Protection (CDF) has had sufficient personnel to properly enforce the rules and regulations. The Board and the Department developed a Monitoring Study Group to evaluate the effectiveness and compliance of the Board's rules. This resulted in a finding that the rules are effective when implemented, but there is a problem with compliance.

The Department has received additional funding for staff to increase the number of inspections for Timber Harvesting Plans (THP). This increase will significantly increase assurance that THPs receive the number of inspections necessary to achieve compliance with the Board's rules. The Plan Submitter, RPF, and the LTO are the individuals who actually do the THP preparation and do the timber harvesting. These parties are actually responsible for compliance with the rules of the Board and are in a position to help assure regulatory compliance. Therefore, the Board is further defining what responsibilities belong to each of these parties. The Board has adopted rules similar to those being proposed for the Southern Subdistrict of the Coast Forest District and has found those to be effective in improving compliance with the Board's rules.

The Plan Submitter is the party that has controlling interest in the THP. The Board rules now place a responsibility on the submitter to provide specific notifications to the Department, the RPF, and the LTO. The rules also require that the Plan Submitter ensure that an RPF conduct any activities for which an RPF is required by regulation. The RPF is the person who prepares the plan and understands what protections are included in the plan for protection of the resources. The current rule does not guarantee that the RPF will be on the THP to oversee the conduct of timber operations. The professional guidance of the RPF for the LTO will provide a better understanding of the protections that are included in the THP for protection of the resources. To accomplish this, the proposed rule requires that the Plan Submitter hire an RPF to provide professional advice to the LTO during all timber operations.

The RPF is the person responsible for the preparation of the THP and has notification requirements under the current rules. The RPF may have economic involvement with the timberland owner, timber owner, plan submitter, or the LTO. This economic relationship has the potential to create a conflict of interest with regard to ensuring compliance with the THP and the rules of the Board. The proposed rule will require the RPF disclose and economic interests the parties associated with the THP. Possible conflicts of interest will be minimized with this disclosure.

The RPF is the party that is responsible for the preparation of the plan and inclusion of direction for the LTO to ensure protection of the natural resource and compliance with the rules of the Board. Currently there is no assurance, except in portions of the Southern Subdistrict, that the RPF has any involvement with the plan or the LTO to ensure that the protective measures in the

plan are understood or implemented by the LTO who actually conducts the timber operations. The proposed rule will require the RPF to be present on the THP to provide the LTO an understanding of what protective measures and operational objectives are designed into the plan. It further provides that the RPF has written authority to stop timber operations if they place natural resources at risk. The RPF will also be responsible to inform the LTO of potential impacts to the resources and how to avoid or minimize those impacts.

The LTO is the person who conducts the timber operations and is responsible for proper implementation of the plan and compliance with the Act and the rules of the Board. The proposed rule will add the requirement that the LTO sign the plan and any major amendments. The objective of this is to establish an agreement that the LTO will provide all of the protective measures and conditions of the plan as approved by the Director. The proposed amendment will also require that the LTO have a designated contact person on the THP available to the RPF to receive advice for compliance or be capable of stopping timber operations if necessary. The objective of this is to ensure that there is always a person available to ensure proper action is taken to maintain compliance with the THP and protect the resources. The LTO is to be invited on a preharvest inspection if one is required. The objective is for the LTO to completely understand the harvest plan.

Availability of the Text in Plain English

According to Government Code section 11346.2, (a)(1) an agency that adopts a regulation that affects small businesses must draft the regulation in plain English as defined in 11342(e). The Board has attempted to draft the regulations in plain English whenever possible, and non-familiar language is defined within the regulations. However, the Board has determined that it is not feasible to fully draft the regulations in plain English due to the technical nature of the regulations. Therefore, a non-controlling plain English summary is available from the agency contact person named in the notice.

To facilitate review, and provide for meaningful public participation in the rulemaking process, the *Informative Digest/Plain English Overview* for this notice and any future notices pertaining to the rule section changes referenced in this notice shall constitute the non-controlling plain English summary of the regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(12), the Board must determine that no alternative it considers would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board has determined that the proposed regulations may impact business. However, the Board has not identified any alternatives that would lessen any adverse impact on small businesses at this time. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, or during the written comment period. Submissions may include the following considerations: (1) The establishment of differing compliance or reporting requirements or time tables that take into account the resource available to businesses, (2) Consolidation or simplification of compliance and reporting requirement for businesses, (3) The use of performance standards rather than prescriptive standards, or (4) Exemption or partial exemption from regulatory requirements for businesses.

CONTACT PERSON

Questions about the proposed action, or requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, and modified text of the regulations; may be directed to:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418 or,
(916) 653-8007

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared a *Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. As of this date, this notice is published in the *Notice Register*.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) Requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Dennis O. Hall
Regulations Coordinator
Board of Forestry and Fire Protection

doh: 2/7/2000
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